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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
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		10/666,079	September 19, 2003
		First Named Inventor	
		Brent O'Meagher	
		Art Unit	Examiner
		2617	Shedrick, Charles Terrell
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>35,398</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>			

<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.

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REMARKS ACCOMPANYING PRE-APPEAL BRIEF REQUEST FOR REVIEW

In response to the Final Office Action dated April 3, 2007, Applicant requests a review of the final rejection of Application Number 10/666,079. Claims 1-30 are rejected under 35 U.S.C. §103(a) as being unpatentable over the combination of Robbins et al., U.S. Patent Application Publication No. 2002/0198657 A1 (hereinafter Robbins), in view of Friedman, WO 01/050151 A1 (hereinafter Friedman), and further in view of Gavrilovich, U.S. Patent No. 5,729, 826. Applicant submits that the Examiner's rejection of the Claims is improper as the rejection does not satisfy the requirements of a *prima facie* case of obviousness. Firstly, the proposed combination changes the principle of operation of the prior art being modified, and secondly the proposed modification renders the prior art being modified unsatisfactory for its intended purpose.

While only certain arguments are addressed in these Remarks, this should not be construed that Applicant agrees with the other arguments presented in the Final Office Action.

PRIMA FACIE CASE OF OBVIOUSNESS NOT MET BECAUSE CITED COMBINATION
CHANGES PRINCIPLE OF OPERATION OF PRIOR ART BEING MODIFIED

According to MPEP 2143.01(VI), "[i]f the proposed modification or combination of the prior art would change the principle of operation of the invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious." *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)" (emphasis added).

Applicant's Claim 1 recites (emphasis added):

A method for delivering Virtual Reference Station (VRS) data derived by a VRS network processor at a VRS control station for a designated location to a mobile position determination unit with a terrestrial communications link, said method comprising:

creating a data message comprising pseudorange data derived for said designated location and pseudorange corrections for a designated region surrounding said designated location;

sending said data message via a cellular telephone connection from said VRS control station to a base station located in the designated region surrounding said designated location; and

transmitting said data message from said base station to a mobile position determination unit using a radio transmitter independent of said cellular telephone connection, wherein said base station may be moved about within said designated region while performing said transmitting.

Independent Claims 11 and 21 contain similar limitations and were rejected with the same rationale as Independent Claim 1. Claims 2-10 that depend from Independent Claim 1, Claims 12-20 that depend from Independent Claim 11, and Claims 22-30 that depend from Independent Claim 21 provide further recitations of the features of the present invention.

The primary reference relied upon is Robbins reference. The rejection relies upon Robbins to teach the “creating” and “sending” elements of Applicant’s claimed invention. Per Applicant’s understanding, the principle of operation of Robbins involves a distribution system which “comprises delivery media for real-time distribution of DGPS data to mobile users,” (emphasis added) see, e.g., paragraph 58, Figure 1, and item 115 of the Robbins reference. In paragraph 58, Robbins describes that a GSM telephone is one type of a mobile user. With reference to paragraph 54 and Figure 1 of Robbins, Applicant understands Robbins to teach:

Network processor NP receives data from all reference stations in the composite data stream CDS and used these data to estimate errors in the satellite ephemerides and clock polynomials broadcast by the GPS satellites. These errors are used along with modeled tropospheric and ionospheric delays to calculate corrections for pseudorange and delta range made by the GPS receiver at the mobile equipment 115. (emphasis added)

The Examiner indicates (and Applicant agrees) that Robbins does not teach a system using a radio transmitter independent of a cellular telephone connection (see e.g. para. 2, page 4;

para. 4, page 8; and para. 2, page 12 of the Office Action mailed on 4/03/2007). To remedy this deficiency, the rejection relies upon Friedman to teach “transmitting said data message from said base station to a mobile position determination unit using a radio transmitter independent of said cellular telephone connection,” as recited in Claim 1. Examiner had previously equated the base stations of a GSM network to the “base station” recited in Claim 1 (see, e.g., para. 1, page 4).

Per Applicant’s understanding, a “base station” (item 54) as taught by Friedman is “... a stationary device previously programmed using a special purpose computer 66 such as a laptop or personal digital assistant” upon installation (emphasis added), see page 14, lines 19-21 of Friedman. Further, Applicant understands Friedman to teach the previously programmed location of the base station to be fixed information about the location of the stationary device, such as, a latitude and longitude, or else a unique identification number associated with data in a lookup table such as a street address, floor number, or room number (see e.g., page 14, line 19 - Page 15, line 13 of Friedman). It is this previously programmed fixed location information which would be wirelessly transmitted to a mobile user by a base station of Friedman (see, e.g., page 15, lines 14-20 of Friedman).

Applicant submits that in modifying Robbins with Friedman, the Examiner has created as system with a fixed base station that transmits previously programmed location information regarding the location of the fixed base station. Applicant submits this significantly changes the principle of operation of Robbins from transmitting real-time Differential Global Positioning System (DGPS) correction and error information, to a system which merely transmits the fixed location of its base stations. As such, in accordance with MPEP 2143.01(VI), Applicant submits that the combined teachings of the Robbins and Friedman references (even with further combination with the Gavrilovich reference) are not sufficient to render the claims *prima facie* obvious, as the suggested combination of Friedman with Robbins significantly changes the principle of operation of Robbins.

Further, the Examiner then indicates (and Applicant agrees) that Robbins as modified by Friedman does not teach a base station that can be moved about within the designated region while transmitting the data message (see e.g., para. 2, page 5; para. 7, page 8; and para. 5, page 12 of the Office Action mailed on 4/03/2007). To remedy this further deficiency, the rejection relies upon Gavrilovich to teach “wherein said base station may be moved about within said designated region while performing said transmitting,” as recited in Claim 1.

Per Applicant’s understanding, Gavrilovich teaches, “[a] mobile communication system [that] employs moving base stations moving in the direction of flow of traffic moving along a roadway,” (emphasis added) see e.g., the Abstract and Figure 1, item 20 of Gavrilovich. Applicant submits that in modifying Robbins in view of Friedman in this manner with Gavrilovich, the Examiner has significantly changed the principle of operation of Friedman (and the combination of the Robbins in view of Friedman), which, as described above, relied upon fixed base stations that transmitted pre-programmed information regarding their fixed location. As such, in accordance with MPEP 2143.01(VI), Applicant submits that the combined teachings of the Robbins and Friedman references in further view of the Gavrilovich reference are not sufficient to render the claims *prima facie* obvious, because the suggested combination of Friedman with Gavrilovich significantly changes the principle of operation of Friedman, and also significantly changes operation of the Examiner’s combination of Robbins in view of Friedman.

PRIMA FACIE CASE OF OBVIOUSNESS NOT MET BECAUSE CITED COMBINATION
RENDERS THE PRIOR ART UNSATISFACTORY FOR ITS INTENDED PURPOSE

According to MPEP 2143.01(V), “[i]f the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification,” (emphasis added) In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

With reference to the remarks above, Applicant submits that modifying Robbins through combination with Friedman renders Robbins unsatisfactory for its intended purpose, and thus a *prima facie* case is not met. Namely, by modifying Robbins with Friedman, the Examiner has created a system with a fixed base station that transmits previously programmed location information regarding the location of the fixed base station. Applicant submits that this will render Robbins unsatisfactory for its intended purpose of producing and transmitting GPS corrections (see at least the Abstract and title of the Robbins reference), as such corrections would no longer be transmitted by the resulting base stations of Robbins in view of Friedman.

Moreover, by combining Gavrilovich with the combination of Robbins in view of Friedman, Applicant submits that Friedman has been rendered unsatisfactory for its intended purpose, and thus a *prima facie* obviousness case is not met. Namely, by modifying Friedman (and the combination of Robbins in view of Friedman) with Gavrilovich, the Examiner has created a system in which the previously fixed base stations are now mobile. This renders Friedman (and Robbins in view of Friedman) unsatisfactory for its intended purpose, because mobile users relied upon the fixed base stations being in a fixed location -- not somewhere different from the fixed location information which they broadcast (see, e.g., page 16, lines 14-17 of Friedman).

In summary, for the reasons discussed above, Applicant believes that a *prima facie* case for the obviousness of independent Claims 1, 11, and 21 has not been met. Thus, Applicant submits that Claims 1, 11, and 21 are allowable over the §103(a) rejection and Claims 2-10, 12-20, and 22-30 which depend from Claims 1, 11, and 21 are allowable by virtue of their dependence upon allowable base claims.